

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

MICHAEL ALLEN BRIGGS,

Defendant.

NO. CR-07-2063-LRS-2

**ORDER DECLARING MISTRIAL AND
SETTING NEW TRIAL DATE AND
PRETRIAL CONFERENCE DATE**

This matter came on for jury trial on June 23, 2008, and concluded on June 24, 2008 when the Court declared a mistrial on **Counts 1 and 2** of the **Indictment** (Ct. Rec. 39). The government was represented by Assistant United States Attorney James P. Hagarty. The Defendant, Michael Allen Briggs, was present and represented by Timothy D. Cotterell, appointed counsel. This Order is entered to memorialize the oral rulings of the Court.

On June 24, 2008, the jury in the above-captioned case sent a note to the Court, indicating that they were unable to reach a unanimous verdict. Following receipt of the note, the Court examined the jury, in the presence of counsel, and the Defendant and gave both counsel the opportunity to ask additional questions of the jury (neither elected to do so) before declaring a mistrial. The Court

1 concluded that the jury was hopelessly deadlocked and that further
2 deliberation would not assist in reaching a unanimous verdict.

3 Accordingly, the Court declared a mistrial and discharged the
4 jury without objection from either the United States or the Defendant
5 on June 24, 2008. The United States requested that a new trial date
6 be set. Both counsel for the United States and the Defendant,
7 however, asked that the date of retrial be delayed until late
8 September to accommodate preparation and trial schedule needs. The
9 Court noted of record that the new date fell beyond the normal speedy
10 trial deadlines and discussed this fact with the Defendant and counsel
11 before accepting a written, signed waiver from the Defendant
12 concerning speedy trial rights for the anticipated delay incident to
13 the new trial setting.

14 **IT IS HEREBY ORDERED:**

15 1. The Court declares a **MISTRIAL** on Counts 1 and 2 of the
16 Indictment (Ct. Rec. 39).

17 2. Defendant's new speedy trial interval on Counts 1 and 2 of
18 the Indictment shall begin with the entry of this Order memorializing
19 the oral ruling of the Court. See 18 U.S.C. § 3161(e) (stating trial
20 to "commence within seventy days from the date the action occasioning
21 the retrial becomes final"); *United States v. Crooks*, 804 F.2d 1441
22 (9th Cir. 1986) (holding under 18 U.S.C. § 3161(e) that "district
23 court's order, not the dismissal of the jury, constituted the action
24 occasioning the new trial"). Defendant signed a waiver of speedy
25 trial rights in open court. Pursuant to 18 U.S.C. § 3161(h), and for
26 reasons placed of record by both counsel and acknowledged by the

1 Defendant, the Court **DECLARES EXCLUDABLE** from Speedy Trial Act
2 **calculations** the period from **June 25, 2008**, the date the new speedy
3 trial interval begins, through **September 22, 2008**, the new date of the
4 trial.

5 3. A pretrial conference is SET for **September 11, 2008 at 11:00**
6 **a.m.** in **Yakima**, Washington.

7 4. Defendant's NEW TRIAL on Counts 1 and 2 of the Indictment is
8 set for **September 22, 2008 at 9:00 a.m.** in **Yakima**, Washington.
9 **Counsel shall meet with the Court in Chambers at 8:30 a.m. on the day**
10 **of trial. Any motions will be addressed at a pretrial conference in**
11 **open court at 8:30 a.m.**

12 5. The Court **RESERVED** ruling on Defendant's Motion for
13 Acquittal, pursuant to Federal Rules of Criminal Procedure, Rule
14 29(b). The Court will decide the motion after briefing is received
15 from the parties. Such briefing shall be filed on or before **July 24,**
16 **2008.**

17 **IT IS SO ORDERED.** The District Court Executive is directed to
18 enter this order and to provide copies to all counsel, the U.S.
19 Marshal Service, and the Jury Administrator.

20 **DATED** this 26th day of June, 2008.

21 ***s/Lonny R. Suko***

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23 LONNY R. SUKO
24 United States District Judge
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